IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. GORDON LASLEY, JR., Defendant.	No. 14-CR-45-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

If you were instructed that some evidence was received for a limited purpose only, you must follow that instruction. During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 7

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 8

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached."

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether you believe these witnesses and how much weight to give their testimony.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his or her opinions on matters in that field and may also state the reasons for his or her opinions.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all other evidence in the case.

INSTRUCTION NO. 10

You have heard testimony from psychologists retained by the defendant. During this testimony, the psychologists repeated out-of-court statements made by the defendant while the defendant was not under oath. You are instructed that these statements are not offered for their truth. You may consider these statements only for the purpose of evaluating each psychologist's basis for his opinion regarding whether the defendant suffers from a severe mental disease or defect.

INSTRUCTION NO. 11

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 12

A reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 13

The Indictment in this case charges the defendant with two counts of first degree murder in Indian Country. The defendant has pleaded not guilty to both of those charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial as to the elements of the crimes charged. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 14

The crime of murder in the first degree within Indian Country, as charged in Count 1 of the Indictment, has five elements, which are:

One, the Defendant unlawfully killed Gordon Lasley, Sr., by using a machete;

Two, the defendant did so with malice aforethought as defined in Instruction No. 18;

Three, the killing was premeditated, as defined in Instruction No. 19;

Four, the Defendant is an Indian; and

Five, the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country.

The defendant has stipulated that he is an Indian and the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country. You must therefore accept these facts as true and consider the fourth and fifth elements as proven.

If you unanimously find that the government proved all of these elements beyond a reasonable doubt, then you must find the defendant guilty of murder in the first degree, unless you also find that the defendant was insane at the time of the crime charged in Count 1, as defined in Instruction No. 20, in which case you must find him not guilty only by reason of insanity. The defendant has the burden of proving, by clear and convincing evidence, that he was insane at the time of the crime. The government does not have the burden of proving that the defendant was sane.

If you do not unanimously find that the government has proved all of the elements of murder in the first degree beyond a reasonable doubt, you must find the defendant not guilty of murder in the first degree in Count 1, and must then consider whether the defendant is guilty of the lesser included offense of murder in the second degree, as defined in Instruction No. 15.

INSTRUCTION NO. 15

If your verdict under Instruction No. 14 is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on murder in the first degree in Count 1, you should go on to consider whether the defendant is guilty of the crime of murder in the second degree under this instruction. The crime of murder in the second degree within Indian Country has four elements, which are:

One, the defendant unlawfully killed Gordon Lasley, Sr.;

Two, the defendant did so with malice aforethought as defined in Instruction No. 18;

Three, the defendant is an Indian; and

Four, the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country.

The defendant has stipulated that he is an Indian and the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country. You must therefore accept these facts as true and consider the third and fourth elements as proven.

If you unanimously find that the government proved all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime of murder in the second degree, unless you also find that the defendant was insane at the time of the crime charged in Count 1, as defined in Instruction No. 20, in which case you must find him not guilty only by reason of insanity. The defendant has the burden of proving, by clear and convincing evidence, that he was insane at the time of the crime. The government does not have the burden of proving that the defendant was sane.

If you do not unanimously find that the government has proved all of the elements of murder in the second degree beyond a reasonable doubt, you must find the defendant not guilty of murder in the second degree in Count 1.

INSTRUCTION NO. 16

The crime of murder in the first degree within Indian Country, as charged in Count 2 of the Indictment, has five elements, which are:

One, the Defendant unlawfully killed Kim Lasley, by using a machete;

Two, the defendant did so with malice aforethought as defined in Instruction No. 18;

Three, the killing was premeditated, as defined in Instruction No. 19;

Four, the Defendant is an Indian; and

Five, the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country.

The defendant has stipulated that he is an Indian and the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country. You must therefore accept these facts as true and consider the fourth and fifth elements as proven.

If you unanimously find that the government proved all of these elements beyond a reasonable doubt, then you must find the defendant guilty of murder in the first degree, unless you also find that the defendant was insane at the time of the crime charged in Count 2, as defined in Instruction No. 20, in which case you must find him not guilty only by reason of insanity. The defendant has the burden of proving, by clear and convincing evidence, that he was insane at the time of the crime. The government does not have the burden of proving that the defendant was sane.

If you do not unanimously find that the government has proved all of the elements of murder in the first degree beyond a reasonable doubt, you must find the defendant not guilty of murder in the first degree in Count 2, and must then consider whether the defendant is guilty of the lesser included offense of murder in the second degree, as defined in Instruction No. 17.

INSTRUCTION NO. 17

If your verdict under Instruction No. 16 is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on murder in the first degree in Count 2, you should go on to consider whether the defendant is guilty of the crime of murder in the second degree under this instruction. The crime of murder in the second degree within Indian Country has four elements, which are:

One, the defendant unlawfully killed Kim Lasley;

Two, the defendant did so with malice aforethought as defined in Instruction No. 18;

Three, the defendant is an Indian; and

Four, the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country.

The defendant has stipulated that he is an Indian and the killing occurred within the confines of the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, Indian Country. You must therefore accept these facts as true and consider the third and fourth elements as proven.

If you unanimously find that the government proved all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime of murder in the second degree, unless you also find that the defendant was insane at the time of the crime charged in Count 2, as defined in Instruction No. 20, in which case you must find him not guilty only by reason of insanity. The defendant has the burden of proving, by clear and convincing evidence, that he was insane at the time of the crime. The government does not have the burden of proving that the defendant was sane.

If you do not unanimously find that the government has proved all of the elements of murder in the second degree beyond a reasonable doubt, you must find the defendant not guilty of murder in the second degree in Count 2.

INSTRUCTION NO. 18

As used in these instructions, "malice aforethought" means an intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life; but "malice aforethought" does not necessarily imply any ill will, spite or hatred towards the individual killed.

In determining whether Gordon Lasley, Sr. and Kim Lasley were unlawfully killed with malice aforethought, you should consider all the evidence concerning the facts and circumstances preceding, surrounding and following the killings which tend to shed light upon the question of intent.

INSTRUCTION NO. 19

A killing is premeditated when it is intentional and the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough for the defendant, after forming the intent to kill, to be fully conscious of his intent, and to have thought about the killing.

For there to be premeditation, the defendant must think about the taking of a human life before acting. The amount of time required for premeditation cannot be arbitrarily fixed. The time required varies as the minds and temperaments of people differ and according to the surrounding circumstances in which they may have been placed. Any interval of time between forming the intent to kill and acting on that intent which is long enough for the defendant to be fully conscious and mindful of what he intended and willfully set about to do, is sufficient to justify the finding of premeditation.

INSTRUCTION NO. 20

A defendant was insane if, at the time of the alleged criminal conduct, as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or the wrongfulness of his acts.

INSTRUCTION NO. 21

Clear and convincing evidence means evidence which places in you an abiding conviction that the truth of its factual contentions are highly probable. It is a lesser standard of proof than proof beyond a reasonable doubt.

INSTRUCTION NO. 22

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 23

You have heard evidence that the defendant has previously assaulted other people. You may consider this evidence only if you unanimously find it is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt and a lower standard of proof than proof by clear and convincing evidence.

If you find that this evidence is more likely true than not true, you may consider it to help you decide whether the defendant had the intent and motive to kill Gordon Lasley, Sr. and Kim Lasley and whether he was insane at the time of the offenses. You should give such evidence the weight and value that you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed these acts in the past, this is not evidence that he committed the killings in this case. You may not convict a person simply because you believe he may have committed violent acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issues of intent, motive and whether the defendant was insane at the time of the offenses.

INSTRUCTION NO. 24

You will note that the Indictment charges that the offenses were committed "on or about" a certain date. The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 25

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 26

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

INSTRUCTION NO. 27

Attached to these instructions you will find the Verdict Forms. The Verdict Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answer to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms in accord with the evidence and these instructions.

December 16, 2014
Date

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa